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Refer to File Number C1713435
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6

7 **UNITED STATES BANKRUPTCY COURT**

8 **CENTRAL DISTRICT OF CALIFORNIA**

9 **SAN FERNANDO VALLEY DIVISION**

10 IN RE:
11 ALBA INTERIANO,
12 DEBTOR.

Case No.: 1:18-bk-11680 VK

13 **SUPPLEMENTAL OPPOSITION TO EX
PARTE MOTION TO TURNOVER OF
PROPERTY OF THE ESTATE;
DECLARATION OF MICHAEL H.
RAICHELSON IN SUPPORT THEREOF**

16 Date: December 10, 2019
17 Time: 11:00 a.m.
Courtroom: 21041 Burbank Blvd., Courtroom
18 301, Woodland Hills, CA 91367

19 Creditor, Persolve Legal Group, LLP (“Persolve”) hereby files its Supplemental
20 Opposition to Ex Parte Motion to Turnover of Property of the Estate as follows:

21 **I.**

23 **INTRODUCTION**

24 As a starting point, this Motion is moot. Persolve notified the Los Angeles Sheriff to turn
25 over the monies identified in the Motion to Debtor, Alba Interiano. *See* Declaration of Michael H.
26 Raichelson in support of this Opposition. Persolve never had an intent to violate in any manner

1 section 362 of the Bankruptcy Code. And, Persolve never had possession of any of the monies
2 identified in the Motion.

3 **II.**
4

5 **PERSOLVE DID NOT WILLFULLY VIOLATE THE AUTOMATIC STAY**

6 On March 29, 2018 (i.e., more than three months before the Debtor files for bankruptcy
7 protection), Persolve submitted its writ of execution to the Los Angeles Sheriff. Thereafter, the
8 Sheriff served the writ of execution on Bank of America. Then, on July 3, 2018, the Debtor filed
9 her bankruptcy petition. On August 6, 2018. Debtor filed her Schedules and supporting paperwork
10 and there was zero mention in the paperwork concerning the funds held by Bank of America and
11 did not make any exemptions related to the funds. *See* Debtor's August 6, 2018 Schedules A/B
12 and C, as well as her Statement of Financial Affairs, item no. 10 Docket no. 14. As reflected in
13 these documents, as of August 6, 2018, the Debtor did not identify the funds held by Bank of
14 America and/or the writ of execution anywhere in her paperwork.
15

16 On or about August 23, 2018, Persolve filed its initial proof of claim in this matter. On or
17 about September 21, 2018, Persolve filed its Objection to Debtor's initial Plan. As clearly stated
18 in the Objection, at that point in time, Persolve did not know if the funds were held by the Sheriff
19 or Bank of America. This is because, in a typical situation, if the Los Angeles Sheriff has monies
20 in its possession when a Debtor is in bankruptcy, it sends notice to the Trustee, the Debtor's
21 counsel, and the Creditor that it has possession of the funds, and requests direction from the parties.
22 In this case, no such notice was ever received by Persolve. *See* Declaration of Michael H.
23 Raichelson in support of this Opposition. **Persolve never received this notice from the Sheriff.**
24

25 **On January 9, 2019, the Debtor's bankruptcy case was dismissed, creating further
26 confusion.** See Docket no. 49. At the time that Debtor's case was dismissed, Persolve still believed
27

1 that the funds were in the possession of Bank of America in that it never received any request from
2 the Debtor to release the funds and/or notice from the Sheriff confirming that the funds were in its
3 possession. On February 12, 2019, the Court issued an Order setting aside the Dismissal. *See*
4 Docket no. 56.

5 In addition, Persolve did not become aware of the transfer of the funds from Bank of
6 America to the Los Angeles Sheriff until August 2019 and/or September 4, 2019. At no time prior
7 to September 4, 2019, did Persolve ever receive any notice from the Sheriff indicating that the
8 funds were transferred, without Persolve's knowledge, from Bank of America to the Sheriff. And,
9 since July 3, 2018 (i.e., the date Debtor filed her bankruptcy) until August 2019, did anyone on
10 Debtor's behalf ever make any demand for the funds. And, at no time did the Sheriff ever transfer
11 the funds to Persolve. Notwithstanding, Persolve on its own initiative notified the Sheriff in October
12 2019 to transfer any funds in its possession to the Debtor out of an abundance of caution.

13 While Persolve disputes whether or not it violated the automatic stay, it is undisputed that
14 Persolve never willfully violated the automatic stay. Thus, the Court should take Debtor's
15 Turnover Motion off calendar and not award any damages to Debtor.

16 III

17 **IT IS NOT APPROPRIATE TO SANCTION PERSOLVE UNDER SECTION 362(k)**

18 First, as noted above, the Debtor never requested that Persolve take any action related to
19 the funds until recently. Second, Persolve was unaware that the funds were transferred from Bank
20 of America to the Sheriff until recently. Third, it would be inappropriate to sanction Persolve
21 under 11 USC Section 362(k) under these circumstances.

22 Section 362(k) requires a "willful" violation of the automatic stay. Once the bankruptcy
23 case was filed, Persolve took no action to collect on the debt, other than filing a proof of claim.

1 and subsequently filing an amended proof of claim. As set forth above, Persolve never had any
2 intent to violate, willfully or otherwise, the automatic stay.

3 In *Miller v. Dusbabek* (In re Miller) (Bankr.D.Colo. Dec. 14, 2011, Nos. 11-26914 ABC,
4 11-1517 ABC) 2011 Bankr. LEXIS 4982, at *8-10.) the Court confirmed that a “creditor's refusal
5 to release garnished funds, to the potential detriment of its lien rights in those funds, does not
6 violate the automatic stay.” “The failure of the garnishor to affirmatively act to release the
7 garnished funds to the debtor does not subject it to actual and/or punitive damages as a ‘willful
8 violation’ of the automatic stay under 11 U.S.C. § 362(k). Since this is the only conduct by
9 Defendants which is alleged to have violated the stay, Plaintiff's complaint does not state a claim
10 upon which relief may be granted.”

11 First, Persolve notified the Sheriff to forward the funds to the Debtor and this Motion is
12 moot. Second, like the creditor in *Miller*, any delay in notifying the Sheriff to forward the funds
13 to the Debtor, to the potential detriment of its lien rights in the Bank of America funds, does not
14 violate the automatic stay. *See Id.* The failure of Persolve to affirmatively act to release the
15 garnished funds to the Debtor does not subject it to actual and/or punitive damages as a “willful
16 violation” of the automatic stay under 11 U.S.C. § 362(k). *See Id.* Since, like *Miller*, this is the
17 only conduct by Persolve which is alleged to have violated the stay, Debtor's request in its Reply
18 does not state a claim upon which this Court may grant relief. *See Id.*

19 Thus, the Motion is moot and no sanctions should be issued.
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1 **IV**
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3 **NO EVIDENCE OF DAMAGES**
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5 Debtor has submitted no evidence concerning purported damages. Thus, even if the Court
6 was inclined to award damages, which it should not, there is no evidence of damages. At this point,
7 it would be improper for Debtor to submit any further evidence in its Reply Brief.
8

9 **V.**
10

11 **CONCLUSION**
12

13 This matter is now moot. So, the Court should take this matter off calendar. Alternatively,
14 the Court should not award any damages to Debtor in that there was no willful violation of the
15 automatic stay.
16

17 Dated this 25th day of November, 2019.
18



19 Michael H. Raichelson, Counsel for Persolve
20

1 **DECLARATION OF MICHAEL H. RAICHELSON**

2 I, Michael H. Raichelson, declare as follows:

3 1. I am currently the General Counsel of Persolve Legal Group, LLP and Persolve, LLC
4 (collectively “Persolve”) unless stated otherwise. As General Counsel, I am familiar with
5 Persolve’s books and records, electronic and paper records. The information set forth
6 below based on my personal knowledge and information obtained from Persolve’s books
7 and records. If called as a witness, I could and would competently testify to the following:
8
9 2. On March 29, 2018 (i.e., more than three months before the Debtor files for bankruptcy
10 protection), Persolve submitted its writ of execution to the Los Angeles Sheriff. Thereafter,
11 the Sheriff served the writ of execution on Bank of America. Then, on July 3, 2018, the
12 Debtor filed her bankruptcy petition.
13
14 3. I have reviewed Debtor’s bankruptcy filing and the Court’s docket and based on that review,
15 on August 6, 2018. Debtor filed her Schedules and supporting paperwork and there was
16 virtually no mention in the paperwork concerning the funds held by Bank of America and
17 the Debtor did not make any exemptions related to the funds. *See* Debtor’s August 6, 2018
18 Schedules A/B and C, as well as her Statement of Financial Affairs, item no. 10 Docket no.
19
20 14. As reflected in these documents, as of August 6, 2018, the Debtor did not identify the
21 funds held by Bank of America and/or the writ of execution anywhere in her paperwork.
22
23 4. On or about August 23, 2018, Persolve filed its initial proof of claim in this matter. On or
24 about September 21, 2018, Persolve filed its Objection to Debtor’s initial Plan. As stated
25 in the Objection, at that point in time, Persolve did not know if the funds were held by the
26 Sheriff or Bank of America. As General Counsel, I learned that when a Debtor files for
27 bankruptcy protection and if the Sheriff is holding funds pursuant to a writ of execution,
28 SUPPLEMENTAL OPPOSITION TO EX PARTE MOTION TO TURNOVER OF PROPERTY OF THE
 ESTATE; DECLARATION OF MICHAEL H. RAICHELSON IN SUPPORT THEREOF - 6

1 Persolve receives a notice from the Sheriff notifying Persolve that funds are being held.
2 And, this notice from the Sheriff requests direction from the parties as to what to do with
3 the funds. Based on review of the file, in this case, no such notice was ever received by
4 Persolve. Again, **Persolve never received this notice from the Sheriff.**
5

6 5. On January 9, 2019, the Debtor's bankruptcy case was dismissed, creating further
7 confusion. See Docket no. 49. At the time that Debtor's case was dismissed, Persolve still
8 believed that the funds were either in the possession of Bank of America or the Sheriff in
9 that it never received any request from the Debtor's attorney to release the funds and/or
10 notice from the Sheriff confirming that the funds were in its possession. On February 12,
11 2019, the Court issued an Order setting aside the Dismissal. *See* Docket no. 56.
12

13 6. Based on my review of Persolve's file, Persolve did not become aware of the transfer of
14 the funds from Bank of America to the Los Angeles Sheriff until August 2019 and/or
15 September 4, 2019. At no time prior to September 4, 2019, did Persolve ever receive any
16 notice from the Sheriff indicating that the funds were transferred, without Persolve's
17 knowledge, from Bank of America to the Sheriff. And, since July 3, 2018 (i.e., the date
18 Debtor filed her bankruptcy) until August 2019, did anyone on Debtor's behalf ever make
19 any demand for Persolve to take any action related to the funds. And, at no time did the
20 Sheriff ever transfer the funds to Persolve. Again, at no time did Persolve have possession
21 of the funds. Notwithstanding, pursuant to my direction, Persolve on its own initiative
22 notified the Sheriff in October 2019 to transfer any funds in its possession to the Debtor
23 out of an abundance of caution.
24

25 7. Persolve never willfully violated the automatic stay. Thus, the Court should take Debtor's
26 Turnover Motion off calendar and not award any damages to Debtor.
27

8. As a point of clarification, when Debtor filed her ex parte motion to turn over the funds, I was not the acting General Counsel for Persolve in that I was on a leave of absence. This was a source of confusion for Persolve related to receiving notices about this matter. I was under the mistaken impression that Persolve was still receiving notices of filings in this matter while I was on a leave of absence. It should also be noted that Persolve was on the Court's Manual Notice List, as identified on the ECF, and based on that List, I was under the impression that notices in this matter were being sent by stakeholders like Debtor via regular mail.

9. One final note – I advised Debtor’s counsel in a telephone call in late October or early November, 2019, that Persolve advised the Sheriff to forward the funds to the Debtor. Since that time, I have inquired at least two times from Debtor’s counsel his intention related to this matter in that I have received an unclear email from Debtor’s counsel. I have received notice response to my queries.

I declare under penalty of the perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: November 25, 2019

Michael H. Raichelson

In re:
Alba Interiano

CHAPTER: 13
Debtor(s).
CASE NUMBER: 1:18-bk-11680 VK

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: **21900 Burbank Blvd., Suite 300, Woodland Hills, CA 91367**

A true and correct copy of the foregoing document entitled (*specify*): SUPPLEMENTAL OPPOSITION TO EX PARTE MOTION TO TURNOVER OF PROPERTY OF THE ESTATE; DECLARATION OF MICHAEL H. RAICHELSON IN SUPPORT THEREOF will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On 11/26/19, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Anthony Obehi Ebase info@aoelaw.com, sandy@ecf.inforuptcy.com; egbasear54561@notify.bestcase.com
- Jamie D Hanawalt ecfcacb@aldridgeppte.com, jhanawalt@ecf.inforuptcy.com
- Raymond Jereza ecfcacb@aldridgeppte.com, rjereza@ecf.inforuptcy.com
- Erin M McCartney bankruptcy@zbslaw.com, emccartney@ecf.courtdrive.com
- Austin P Nagel melissa@apnagellaw.com
- Elizabeth (SV) F Rojas (TR) cacb_ecf_sv@ch13wla.com
- United States Trustee (SV) ustpregion16.wh.ecf@usdoj.gov
- Jennifer H Wang jwang@cookseylaw.com, jwang@ecf.courtdrive.com

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On , I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on November 26, 2019, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

The Honorable Victoria Kaufman

In re: Alba Interiano	Debtor(s).	CHAPTER 13 CASE NUMBER 1:18-bk-11680
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Service information continued on attached page

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

November 26, 2019 **Michael H. Raichelson**

Date

Printed Name

Signature